

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ENVIRONMENTAL PROTECTION
INFORMATION CENTER, et al.,

Plaintiffs,

v.

UNITED STATES FISH AND WILDLIFE
SERVICE, et al.,

Defendants.

No. C 04-04647 CRB

ORDER RE: ORAL ARGUMENT

At the oral argument on plaintiffs' motion for a preliminary injunction, the parties should be prepared to address the following questions in particular:

1. Were 151 dead murrelets within the contemplation of the HCP and its projection of "several times higher" than nine murrelet deaths due to large oil spills?
2. How does the Fish & Wildlife Service conclude that overall murrelet population will decline only four to seven percent per year, when Zone 4 lost six percent just due to oil spills?
3. What supports Fish & Wildlife Service's belief that fecundity will increase?

a. As defined by Fish & Wildlife Service, how can increased fecundity lead to increased population?

b. Could the Fish & Wildlife Service still rationally reject the McShane population model even if they irrationally assumed increased murrelet fecundity?

c. Could the Fish & Wildlife Service still rationally conclude "no jeopardy" while irrationally rejecting the McShane population model?

4. Does the 1999 BiOp's "no jeopardy" analysis take into account the occupied and preserved lands on the adjacent Humboldt Redwoods State Park? If so, how is it irrational for the 2005 BiOp to take into account an increased percentage of occupied and preserved lands?

IT IS SO ORDERED.

Dated: October 31, 2005


 CHARLES R. BREYER
 UNITED STATES DISTRICT JUDGE